

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
QUANTUM CORPORATE FUNDING, LTD

Plaintiff,

-against-

WESTWOOD DESIGN/BUILD
INCORPORATED, DAVID R. WARFIELD,
NATIONAL CITY MORTGAGE, INC. and PENN
LYON HOMES CORPORATION

Defendants.

Docket No. 08 CV 00539(LAK) (HP)

**REPLY DECLARATION IN
FURTHER SUPPORT OF MOTION
TO VACATE JUDGMENT,
RECONSIDERATION AND FOR
OTHER RELIEF AND ORDER TO
SHOW CAUSE TO STAY
ENFORCEMENT**

SCOTT GOLDSTEIN, duly affirms the following under penalty of perjury:

1. I am an Of Counsel with the law firm of BONNER KIERNAN TREBACH & CROCIATA, LLP, attorneys for Penn Lyon Homes Corporation ("PLH") in this action. I am fully familiar with the facts and circumstances of this case, the source of my knowledge being the file maintained by my office in the course of handling this matter.

2. We submit this reply declaration in further support of defendant Penn Lyon Homes Corporation's ("PLH") motion to vacate the summary judgment decision granted on default as a result of defendant PLH's purported failure to file an opposition to plaintiff's motion for summary judgment and for other relief.

3. A true copy of the estoppel certificate executed by defendant National, citing Westwood's Invoice is annexed hereto as Exhibit A.

4. Copies of selected pages from the August 7, 2008 deposition of Maria Luiza DeSouza are annexed hereto as Exhibit B.

5. Copies of selected pages from the August 8, 2008 deposition of Craig Sheinker are annexed hereto as Exhibit C.

WHEREFORE, we respectfully request that the within motions be granted, as well as such other and further relief as may be just and proper.

Dated: New York, New York
August 25, 2008



Scott H. Goldstein

EXHIBIT

“A”

Quantum Corporate Funding, Ltd.

1140 Avenue of the Americas, 16th Floor
New York, N.Y. 10036
Tel. 212 768-1200
800 352-2585
Fax 212 944-8216

12/18/07

Mr. Christopher Washburn
Branch Manager
National City Mortgage Company
7852 Walker Drive, Suite 400
Greebelt, MD 20770

Re: Our Transaction# 25914 Client: Westwood Design Build Incorporated
Our Debtor#: 32772. Our Client#: 5999

U.O.#/Contract#	Job# / Project#	Controller#	Contract/ P.O.Date	Invoice#	Inv.Date	Terms	Invoice Amount
	Project: Pollydora Residence. Construction Draw, Pollydora module delivery-#0005351534.			10084	12/18/07	45	****\$347,000.00

*****\$347,000.00

Dear Mr. Washburn:

We are the assignee of payment of the above captioned company. Attached is a letter from it authorizing all payments on the captioned invoices to be sent directly and solely to Quantum Corporate Funding, Ltd.

The undersigned Account Obligor acknowledges to Quantum Corporate Funding, Ltd. that the above invoice Amount(s) are correct and owing by us; that the work and or merchandise has been ordered from and completed by the captioned Client, and accepted by us; that there are not now, nor will there be, any claims, setoffs, or defenses beyond 20% of the Invoice Amount(s); Neither Quantum nor its agents made any representations except as herein set forth. This estoppel is not subject to modification. New York law, jurisdiction and venue shall apply hereto.

Very truly yours,

maria Luisa de Souza

Shelley Simmonds
Senior Account Exec.

Agreed & Accepted

Authorized Signature

Account Obligor: National City Mortgage Company
Print Name:

Title

Branch Manager

EXHIBIT

“B”

<p style="text-align: center;">DeSouza - Doherty 118</p> <p>1 Q. Did you ever speak by phone with</p> <p>2 Timothy at National City?</p> <p>3 A. No.</p> <p>4 Q. Did you have any further discussions</p> <p>5 with Christopher Washburn of National City in late</p> <p>6 December or in January of 2008?</p> <p>7 A. No.</p> <p>8 MR. DOHERTY: Please mark this as</p> <p>9 D-13.</p> <p>10 (Exhibit D-13, two page e-mail chain,</p> <p>11 GF01 and GF02, is marked for identification.)</p> <p>12 Q. Ms. DeSouza, I'm going to show you a</p> <p>13 two-page document that's been marked for</p> <p>14 identification as D-13. It's been labeled GF1 and</p> <p>15 2. It was produced by Quantum's lawyer.</p> <p>16 Would you please take a look through</p> <p>17 these two pages and let me know if this is something</p> <p>18 you recognize from prior to the filing of the</p> <p>19 lawsuit.</p> <p>20 A. Yes, I recognize it.</p> <p>21 Q. What are these pages?</p> <p>22 A. E-mail send to Mr. Justice from</p> <p>23 myself.</p> <p>24 Q. The second page of D-13, you said you</p> <p>25 sent it to Mr. Justice. Does that refresh your</p>	<p style="text-align: center;">DeSouza - Goldstein 120</p> <p>1 Is the December 18th letter to Mr. Washburn. Why</p> <p>2 does Quantum send this letter out?</p> <p>3 A. This is verification letter to -- for</p> <p>4 the debtors, which in this case is National City</p> <p>5 Mortgage, for them to have something in writing</p> <p>6 letting us know that, yeah, in fact, the merchandise</p> <p>7 has been delivered, the amount shown on the letter</p> <p>8 along with the invoice is okay and it's due and owed</p> <p>9 and will be paid to Quantum Corporate Funding within</p> <p>10 the terms that shows on the letter.</p> <p>11 Q. And why do you have National sign the</p> <p>12 letter?</p> <p>13 A. Because they were the one that owed</p> <p>14 Quantum the money.</p> <p>15 Q. And if you didn't get someone from</p> <p>16 National to sign the letter, what would you do with</p> <p>17 respect to the agreement with Westwood?</p> <p>18 A. Not fund them.</p> <p>19 Q. You'd not fund the agreement?</p> <p>20 A. Correct.</p> <p>21 Q. Is there any way that you would fund</p> <p>22 that agreement without a signature on this letter?</p> <p>23 A. No.</p> <p>24 Q. And why is that?</p> <p>25 A. Because we need someone with an</p>
<p style="text-align: center;">DeSouza - Doherty 119</p> <p>1 recollection as to who Timothy was?</p> <p>2 A. Correct.</p> <p>3 Q. Is that Timothy Justice at National</p> <p>4 City?</p> <p>5 A. Mmm-hmm.</p> <p>6 Q. You sent it to him because Mr. Sheinker</p> <p>7 told you to?</p> <p>8 A. Correct.</p> <p>9 Q. Had you had any prior dealings with Mr.</p> <p>10 Justice before Mr. Sheinker told you to send an</p> <p>11 e-mail to him in January of 2008?</p> <p>12 A. No.</p> <p>13 Q. Besides the e-mail exchange that's</p> <p>14 reflected on these two pages of D-13, did you have</p> <p>15 any other e-mail communications with Mr. Justice?</p> <p>16 A. No.</p> <p>17 MR. DOHERTY: Off the record.</p> <p>18 (Discussion held off the record.)</p> <p>19 EXAMINATION BY MR. GOLDSTEIN:</p> <p>20 Q. Good afternoon, Mrs. DeSouza. My name</p> <p>21 is Scott Goldstein. I was here earlier, I went</p> <p>22 home, I came back, and now I'm going to ask you some</p> <p>23 questions. I represent Penn Lyon.</p> <p>24 I'm going to show you what has been</p> <p>25 previously marked as D-9 for identification, which</p>	<p style="text-align: center;">DeSouza - Goldstein 121</p> <p>1 authority to let -- to verify to Quantum that, in</p> <p>2 fact, merchandise has been delivered and, in fact,</p> <p>3 we will receive the money.</p> <p>4 Q. When was -- getting back to -- I'm</p> <p>5 going to show you what's been marked as D-11 for</p> <p>6 identification.</p> <p>7 A. Okay.</p> <p>8 Q. Now, what was the date that that</p> <p>9 agreement was entered into?</p> <p>10 A. This was in December.</p> <p>11 Q. I think it's on page 2 of the</p> <p>12 agreement.</p> <p>13 A. December 20.</p> <p>14 Q. And when this agreement was signed by</p> <p>15 -- who was the agreement signed by?</p> <p>16 A. David.</p> <p>17 Q. And who else?</p> <p>18 A. Just David and Shelley Simmonds.</p> <p>19 Q. Shelley Simmonds is with Quantum?</p> <p>20 A. Correct.</p> <p>21 Q. Did you have Defendant's Exhibit 9 in</p> <p>22 your hands when Defendant's Exhibit 11 was signed by</p> <p>23 all parties?</p> <p>24 A. Yes. Yes.</p> <p>25 Q. The factoring agreement that you talked</p>

<p>DeSouza - Goldstein 122</p> <p>1 about earlier, was that signed by somebody?</p> <p>2 A. No.</p> <p>3 Q. How do you enter into the factoring</p> <p>4 agreement?</p> <p>5 A. I don't -- I don't recall anything on</p> <p>6 the factoring agreement on the legal folder. That's</p> <p>7 done by someone else.</p> <p>8 Q. But is that something that's verbally</p> <p>9 done? How does the process work?</p> <p>10 A. It's in writing.</p> <p>11 Q. Does the factoring agreement require a</p> <p>12 signature?</p> <p>13 A. Yes.</p> <p>14 Q. Is it a separate document than what's</p> <p>15 been marked as Defendant's Exhibit 11?</p> <p>16 A. Yes.</p> <p>17 Q. Is there any way -- Is the -- strike</p> <p>18 that.</p> <p>19 Does the factoring agreement end the</p> <p>20 transaction?</p> <p>21 A. No.</p> <p>22 Q. Is there a way for Quantum to get out</p> <p>23 of the transaction after the factoring agreement has</p> <p>24 been entered into?</p> <p>25 A. Yes.</p>	<p>DeSouza - Goldstein 124</p> <p>1 the letter.</p> <p>2 Q. Is there any reason why Christopher</p> <p>3 never authorized the letter -- do you know why</p> <p>4 Christopher didn't authorize the letter in the</p> <p>5 Harris case?</p> <p>6 A. No, I don't.</p> <p>7 Q. Based on the fact that Christopher did</p> <p>8 not sign the letter, is it your testimony that</p> <p>9 that's the reason why you didn't enter into an</p> <p>10 agreement on the Harris project?</p> <p>11 A. Correct.</p> <p>12 Q. Who approached Quantum with the Harris</p> <p>13 project? Did Quantum approach Westwood, or did</p> <p>14 Westwood approach Quantum?</p> <p>15 A. Westwood approached Quantum.</p> <p>16 Q. When was the Postell agreement?</p> <p>17 A. It was on late October, beginning of</p> <p>18 November.</p> <p>19 Q. Had you ever heard -- had you ever</p> <p>20 heard of Westwood prior to dealing with them on the</p> <p>21 Postell agreement?</p> <p>22 A. No.</p> <p>23 Q. And on the Postell agreement, who</p> <p>24 contacted who? Was it Westwood contacted Quantum or</p> <p>25 vice versa?</p>
<p>DeSouza - Goldstein 123</p> <p>1 Q. How does that happen?</p> <p>2 A. If we never get an authorization</p> <p>3 signature from the debtor, which is National City</p> <p>4 Mortgage.</p> <p>5 Q. How many transactions had Quantum</p> <p>6 entered into with Westwood prior to this one?</p> <p>7 MR. KOBROFF: If she knows.</p> <p>8 MR. GOLDSTEIN: To the extent she</p> <p>9 knows. Everything is understood to mean if she</p> <p>10 knows.</p> <p>11 MR. KOBROFF: Okay.</p> <p>12 BY MR. GOLDSTEIN:</p> <p>13 A. Westwood and National is one prior to</p> <p>14 the Pollydore.</p> <p>15 Q. One prior?</p> <p>16 A. For the Postell.</p> <p>17 Q. And did they also do an agreement for</p> <p>18 Harris?</p> <p>19 A. For Harris, which we never fund,</p> <p>20 correct.</p> <p>21 Q. You never funded the Harris agreement?</p> <p>22 A. Correct.</p> <p>23 Q. With respect to the Harris agreement,</p> <p>24 why didn't you fund the Harris agreement?</p> <p>25 A. Because Christopher never authorized</p>	<p>DeSouza - Goldstein 125</p> <p>1 A. Westwood contacted Quantum.</p> <p>2 Q. On any of the other -- any of these</p> <p>3 projects that Westwood did with Quantum, were funds</p> <p>4 wired to -- other than the Pollydore one, were funds</p> <p>5 wired to anyone other than Quantum? I'm sorry, to</p> <p>6 Westwood. Sorry.</p> <p>7 A. No.</p> <p>8 MR. GOLDSTEIN: Can you mark this as</p> <p>9 Penn Lyon-1.</p> <p>10 (Exhibit Penn Lyon-1, one-page letter</p> <p>11 dated December 20, 2007 to Quantum Corporate Funding</p> <p>12 from David R. Warfield, is marked for</p> <p>13 identification.)</p> <p>14 Q. I show you what's been marked as Penn</p> <p>15 Lyon-1. Have you ever seen this document before?</p> <p>16 A. I have seen it, yes.</p> <p>17 Q. When did you last see this document?</p> <p>18 A. Like I said, when I came back from the</p> <p>19 day that I was out.</p> <p>20 Q. Do you know what that document is?</p> <p>21 A. From what I can read here, it's David</p> <p>22 Warfield from Westwood giving permission to Quantum</p> <p>23 to forward 112,168.21 to Penn Lyon.</p> <p>24 Q. Why would you need permission from</p> <p>25 Westwood to send money to Penn Lyon?</p>

<p style="text-align: center;">DeSouza - Goldstein 126</p> <p>1 A. Because the whole money that was to be 2 wired was to be going to Westwood. Therefore, they 3 need to give us the permission to send you whatever 4 it is to be sent to you, Penn Lyon. 5 MR. GOLDSTEIN: Okay, I have nothing 6 further. 7 MR. DOHERTY: Mrs. DeSouza, just a 8 couple more. 9 EXAMINATION BY MR. DOHERTY: 10 Q. To your knowledge, does Quantum have 11 written factoring agreements between Westwood and 12 Quantum for the Pollydore and Postell projects? 13 A. I don't know. 14 MR. DOHERTY: (R) I'll follow up with 15 a letter, but to the extent there is such a written 16 agreement called a factoring agreement between 17 Westwood and Quantum, I'd like to get a copy of 18 that. 19 Q. Ms. DeSouza, are you aware of any 20 representations made by Mr. Conrad to Christopher 21 Washburn in order to get Mr. Washburn to sign the 22 Quantum authorization letter? 23 A. I don't know. 24 Q. What did Quantum provide to National 25 City in exchange for Mr. Washburn signing the</p>	<p style="text-align: center;">DeSouza - Doherty 128</p> <p>1 to. 2 Q. Did Quantum provide National City with 3 any kind of money in exchange for Mr. Washburn 4 signing a Quantum authorization letter in connection 5 with the Pollydore project? 6 A. No. 7 Q. Have you described in your testimony up 8 to now all of the conversations that you can 9 remember having with Christopher Washburn from 10 National City? 11 A. I'm sorry, can you repeat that. 12 Q. Let me try to rephrase it. 13 When I was asking you about 14 conversations that you had with Christopher 15 Washburn, is there any that I didn't ask you about 16 that you can remember? 17 A. No. 18 Q. So what you testified to before is all 19 you remember about conversations that you had with 20 Mr. Washburn? 21 A. Yes. 22 Q. Were there any details that you 23 remember that I didn't ask you about that you want 24 to tell me now? 25 A. No.</p>
<p style="text-align: center;">DeSouza - Doherty 127</p> <p>1 Quantum authorization letter? 2 A. Can you please rephrase that. 3 Q. What did National City get out of 4 signing the authorization letter in connection with 5 the Pollydore project? 6 MR. KOBROFF: I'm going to object to 7 the form. I mean, that's a question that's best 8 asked of National City than my client. 9 MR. DOHERTY: Well, I'm entitled to 10 ask it and see what she answers. 11 MR. KOBROFF: If you know, what did 12 National City get out of this? 13 THE WITNESS: I don't know. 14 Q. Did Quantum provide any kind of benefit 15 to National City in exchange for Mr. Washburn 16 signing a Quantum authorization letter? 17 A. No. 18 MR. KOBROFF: Can you read that back 19 for me. 20 (Last question and answer are read 21 back by the court reporter.) 22 MR. KOBROFF: I'm going to object to 23 the form of that. You're calling for a legal 24 conclusion, and I object to the question and I ask 25 that the witness's answer be noted as being objected</p>	<p style="text-align: center;">DeSouza - Doherty 129</p> <p>1 Q. Did you tell me about all the details 2 you can remember about any conversations you had 3 with Heather Stackhouse? 4 A. Yes. 5 Q. Are there any details of any discussion 6 you had with David Long of National City that you 7 haven't told me about yet? 8 A. No. 9 Q. Are there any e-mail communications 10 that you had with Christopher Washburn that you 11 haven't described today in response to my questions 12 this morning and earlier this afternoon? 13 A. Not that I can recall, no. 14 Q. Do you have a computer folder where you 15 save e-mail communications regarding the Pollydore 16 project? 17 A. I don't have a specific place where I 18 put my deleted folders for Pollydore, no, I don't. 19 Q. Do you have a procedure or a policy 20 that you follow for saving e-mail that relates to 21 individual projects that Quantum does? 22 A. No. 23 Q. Is it your practice to print out and 24 put a paper copy of all your e-mail communications 25 in the folder that pertains to a particular</p>

EXHIBIT

“C”

MR. KOBROFF: You're asking --

1 experience in this business, who does that usually
 2 refer to?
 3 **A. It depends upon the entity.**
 4 **Q.** What type of entities are examples of
 5 this?
 6 **A. I don't know what you mean.**
 7 **Q.** What type of entities usually authorize
 8 these type of certificates?
 9 **A. What type of entities? We've got --**
 10 **we've been in business 18 years. All different**
 11 **types of entities.**
 12 **Q.** Give me a couple of them.
 13 **A. General contractors, retailers. You**
 14 **got a couple there. That's two.**
 15 **Q.** Do you present them to banks sometimes?
 16 Let me rephrase. Do you ask banks to
 17 sign estoppel certificates?
 18 **A. I believe so.**
 19 **Q.** Do you ask mortgage lending companies
 20 to sign estoppel certificates on occasion, "you"
 21 meaning Quantum again?
 22 **A. I believe so, but it's been -- you**
 23 **know, has been awhile since that has happened, so I**
 24 **can't recall specifically.**
 25 **Q.** And what does Quantum use the estoppel

Sheinker - Goldstein

87

1 certificate for in connection with these
 2 transactions?
 3 **A. Which transactions?**
 4 **Q.** In connection with this transaction,
 5 the Pollydore transaction?
 6 **A. Quantum is not at the job location and**
 7 **can't possibly know without going through monumental**
 8 **efforts to determine whether or not the work has**
 9 **been performed, completed, and accepted to**
 10 **specifications and levels of acceptance of the**
 11 **account debtor. So where we have concentrations, we**
 12 **are inclined to use an estoppel certificate.**
 13 **Q.** What does the estoppel certificate do
 14 for Quantum?
 15 **A. It creates a binding obligation upon**
 16 **the account debtor to make payment.**
 17 **Q.** In cases where Quantum is requesting
 18 that an account debtor sign an estoppel certificate,
 19 if the estoppel certificate is not signed, will
 20 Quantum typically enter into the transaction?
 21 **A. It depends upon the circumstances.**
 22 **Q.** Let's go with the Pollydore transaction
 23 circumstances.
 24 **A. You want me to answer a hypothetical**
 25 **question as to whether or not --**

1 **MR. KOBROFF: You're asking --**
 2 **A. -- I would have done this without the**
 3 **estoppel certificate?**
 4 **Q.** Yes.
 5 THE WITNESS: Am I supposed to answer
 6 hypothetical questions?
 7 MR. KOBROFF: Objection to form. If
 8 you can answer.
 9 **A. I would not have done this**
 10 **transaction, in my hypothetical opinion, had I not**
 11 **gotten the estoppel certificate, in response to your**
 12 **hypothetical question.**

13 **Q.** Was Quantum ever presented with a
 14 transaction called the Harris project by Westwood?
 15 **A. I'm not sure.**
 16 **Q.** Have you ever heard of a transaction
 17 called the Harris project?
 18 **A. Yes.**
 19 **Q.** What is your understanding of what the
 20 Harris project was?
 21 **A. I believe that -- well, my**
 22 **understanding is it was another modular project of**
 23 **Westwood.**
 24 **Q.** Did Westwood ever request that Quantum
 25 fund or purchase an invoice with respect to the

Sheinker - Goldstein

89

1 Harris project?
 2 **A. I wouldn't have direct knowledge of**
 3 **that.**
 4 **Q.** Who would have direct knowledge of
 5 that?
 6 **A. Either Maria or Shelley.**
 7 **Q.** By Shelley you mean Shelley Simmonds?
 8 **A. Yes.**
 9 **Q.** And Maria is Maria DeSouza?
 10 **A. Right.**
 11 **Q.** Who has the final say at Quantum
 12 whether Quantum enters into a purchase and sale
 13 agreement?
 14 MR. KOBROFF: Objection to form.
 15 **Q.** I'll ask it a different way. Who has
 16 final approval over all transactions that Quantum
 17 enters into?
 18 MR. KOBROFF: Objection to form.
 19 **A. I approve the wires or my**
 20 **brother-in-law Howard Chernin approves the wires.**
 21 **Transactions are generally generated by the**
 22 **operations staff, and provided that everything is**
 23 **proper the wires will go out. So we spot-check**
 24 **transactions. I say "we" meaning myself or Howard**
 25 **will spot-check the transactions before they're sent**